

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES R. MURPHY,

Petitioner,

V.

**WASHINGTON STATE ATTORNEY  
GENERAL,**

## Respondent.

Case No. C04-5277FDB

## REPORT AND RECOMMENDATION

**NOTED FOR:  
NOVEMBER 12<sup>th</sup> 2004**

This Habeas Corpus Action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254.

Petitioner originally named the Washington State Attorney General as a respondent. At that time petitioner was in the Stafford Creek Correctional facility and the superintendent of that facility, Doug Waddington, should have been named.

An order to amend the petition to name a proper respondent was entered on July 27<sup>th</sup>, 2004. (Dkt. # 2). Petitioner was given until August 27<sup>th</sup>, 2004 to comply. Petition has not replied and on August 5<sup>th</sup>, 2004 the order sent to him was returned by the post office as undeliverable. Thus, it has been more than 60 days since mail was returned as undeliverable and the court has no address for petitioner. Apparently petitioner has been released from incarceration and has abandoned this action.

The undersigned now recommends **DISMISSAL WITHOUT PREJUDICE** for failure to keep the court informed of a current address and failure to comply with a court order.

## **DISCUSSION**

Local Rule 41 (b) (2) states:

A party proceeding pro se shall keep the court and opposing parties advised as to his current address. If mail directed to a pro-se plaintiff by the clerk is returned by the post office, and if such plaintiff fails to notify the court and opposing parties within sixty days thereafter of his current address, the court may dismiss the action without prejudice for failure to prosecute.

8        This action has existed more than sixty days without an address for the plaintiff. Dismissal  
9 without prejudice for failure to prosecute is appropriate. Accordingly, the undersigned recommends  
10 dismissal without prejudice for failure to prosecute. Alternatively the court would recommend  
11 dismissal without prejudice for failure to comply with the court's order to amend and name a proper  
12 respondent.

## **CONCLUSION**

The court should dismiss this action as plaintiff has left no forwarding address and appears to have abandoned the case. A proposed order and proposed judgment accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **November 12<sup>th</sup> 2004**, as noted in the caption.

DATED this 12<sup>th</sup> day of October, 2004.

/S/ Karen L. Strombom  
Karen L. Strombom  
United States Magistrate Judge